

Examiner asserts that claims 39-50 are generic to a plurality of disclosed patentably distinct species comprising the following nucleic acid sequences encoding an Akt polypeptide which shares at least 98% amino acid identity with SEQ ID NO:2:

- NA: SEQ ID NO:1, 3 and 5; and

- AA: SEQ ID NO:2, 4 and 6.

Group II – Claims 51-58, as specifically drawn to a method of treating myocardial infarction comprising administering to a subject in need of such treatment an Akt polypeptide in an amount effective to inhibit cardiac tissue necrosis in the subject; further, the Examiner asserts that claims 52-54 are generic to a plurality of disclosed patentably distinct species comprising the following nucleic acid sequences encoding an Akt polypeptide which shares at least 98% amino acid identity with SEQ ID NO:2:

- AA: SEQ ID NO:2, 4 and 6.

In response to the restriction requirement, Applicant has elected Group I, claims 1-3, 5, and 39-50 for continued examination, and, further, has elected the species of NA: SEQ ID NO:1 and AA: SEQ ID NO:2. Applicant expressly reserves the right to pursue the non-elected invention in a divisional application.

This election is made with traverse because Applicant believes no significant additional burden of searching would be placed upon the examiner by requiring examination of both Groups and by requiring examination of all species set forth in the restriction and election of species requirement. In addition, it should be noted in respect of the election of Group I that that SEQ ID NOs 1, 3, and 5 all encode an Akt polypeptide which share at least 98% amino acid identity with SEQ ID NO: 2, and that SEQ ID NOs 2, 4, and 6 all share at least 98% amino acid identity with SEQ ID NO: 2. Applicant notes that the Examiner has indicated that claims 39-50 are generic to these species. Applicant further notes that the Examiner has acknowledged that upon allowance of a generic claim, Applicant will be entitled to consideration of claims to

additional species which depend from or otherwise require all the limitations of an allowable generic claim.

Claims 1-3, 5, 39, 42, 45, and 48 are believed to represent a grouping representative of the elected species.

Applicant respectfully requests examination of the elected claims.

Respectfully submitted,

By 

Alan W. Steele, M.D., Ph.D.

Registration No.: 45,128

WOLF, GREENFIELD & SACKS, P.C.

Federal Reserve Plaza

600 Atlantic Avenue

Boston, Massachusetts 02210-2206

(617) 646-8000

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